

# PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:  
CRAIG P. WONG  
TOWNSEND AND TOWNSEND AND CREW LLP  
TWO EMBARCADERO CENTER, 8TH FLOOR  
SAN FRANCISCO, CA 94111

SMH

**PCT**

NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL SEARCH REPORT AND  
THE WRITTEN OPINION OF THE INTERNATIONAL  
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

018489-002541 PC

Date of mailing  
(day/month/year)

**13 JUN 2008**

Applicant's or agent's file reference  
18489-27-IPC

**FOR FURTHER ACTION** See paragraphs 1 and 4 below

International application No.  
PCT/US04/12600 ✓

International filing date  
(day/month/year) 22 April 2004 (22.04.2004) ✓

Applicant  
FOX HOLLOW TECHNOLOGIES, INC.

1. ☒ The applicant is hereby notified that the international search report and the written opinion of the International Searching Authority have been established and are transmitted herewith.

**Filing of amendments and statement under Article 19:**

The applicant is entitled, if he so wishes, to amend the claims of the international application (see Rule 46):

**When?** The time limit for filing such amendments is normally two months from the date of transmittal of the international search report. *8/13/08*

**Where?** Directly to the International Bureau of WIPO, 34 chemin des Colombettes  
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70.

For more detailed instructions, see the notes on the accompanying sheet.

2. ☐ The applicant is hereby notified that no international search report will be established and that the declaration under Article 17(2)(a) to that effect and the written opinion of the International Searching Authority are transmitted herewith.

3. ☐ **With regard to the protest** against payment of (an) additional fee(s) under Rule 40.2, the applicant is notified that:

☐ the protest together with the decision thereon has been transmitted to the International Bureau together with the applicant's request to forward the texts of both the protest and the decision thereon to the designated Offices.

☐ no decision has been made yet on the protest; the applicant will be notified as soon as a decision is made.

4. **Reminders** *10/22/04*

Shortly after the expiration of **18 months** from the priority date, the international application will be published by the International Bureau. If the applicant wishes to avoid or postpone publication, a notice of withdrawal of the international application, or of the priority claim, must reach the International Bureau as provided in Rules 90bis.1 and 90bis.3, respectively, before the completion of the technical preparations for international publication.

The applicant may submit comments on an informal basis on the written opinion of the International Searching Authority to the International Bureau. The International Bureau will send a copy of such comments to all designated Offices unless an international preliminary examination report has been or is to be established. These comments would also be made available to the public but not before the expiration of 30 months from the priority date.

Within **19 months** from the priority date, but only in respect of some designated Offices, a demand for international preliminary examination must be filed if the applicant wishes to postpone the entry into the national phase **until 30 months** from the priority date (in some Offices even later); otherwise, the applicant must, **within 20 months** from the priority date, perform the prescribed acts for entry into the national phase before those designated Offices. *12/22/04*

In respect of other designated Offices, the time limit of **30 months** (or later) will apply even if no demand is filed within 19 months.

See the Annex to Form PCT/IB/301 and, for details about the applicable time limits, Office by Office, see the *PCT Applicant's Guide*, Volume II, National Chapters and the WIPO Internet site.

Name and mailing address of the ISA/US  
Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
Facsimile No. (571) 273-3201

Authorized officer

Tuan V. Nguyen *[Signature]*

Telephone No. 571-272-5962 *[Signature]*

art 19  
fields  
srch rpt recd  
Docketed By TJS *[Signature]*

# PATENT COOPERATION TREATY

# PCT

## INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 18489-27-1PC	<b>FOR FURTHER ACTION</b> <div style="display: inline-block; width: 40%; text-align: right; font-size: small;">             see Form PCT/ISA/220 as well as, where applicable, item 5 below           </div>	
International application No. PCT/US04/12600	International filing date ( <i>day/month/year</i> ) 22 April 2004 (22.04.2004)	(Earliest) Priority Date ( <i>day/month/year</i> ) 22 April 2003 (22.04.2003)
Applicant FOX HOLLOW TECHNOLOGIES, INC.		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 7 sheets.

☐ It is also accompanied by a copy of each prior art document cited in this report.

**1. Basis of the Report**

a. With regard to the **language**, the international search was carried out on the basis of:

☒

the international application in the language in which it was filed.

☐

a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b))

b. ☐ This international search report has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 Rule 43.6 *bis(a)*

c. ☐ With regard to any **nucleotide and/or amino acid sequenced** disclosed in the international application, see Box No. I.

2. ☐ **Certain claims were found unsearchable** (See Box No. II)

3. ☐ **Unity of invention is lacking** (See Box No. III)

4. With regard to the **title**,

☒

the text is approved as submitted by the applicant.

☐

the text has been established by this Authority to read as follows:

5. With regard to the **abstract**,

☒

the text is approved as submitted by the applicant.

☐

the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box No. IV. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. With regard to the **drawings**,

a. the figure of the **drawings** to be published with the abstract is Figure No. \_\_\_\_\_

☐

as suggested by the applicant.

☐

as selected by this Authority, because the applicant failed to suggest a figure.

☐

as selected by this Authority, because this figure better characterizes the invention.

b. ☒ none of the figures is to be published with the abstract.

# INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/12600

## A. CLASSIFICATION OF SUBJECT MATTER

IPC: **A61B 17/32**( 2006.01)

USPC: 606/170

According to International Patent Classification (IPC) or to both national classification and IPC

## B. FIELDS SEARCHED

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 606/170

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)

## C. DOCUMENTS CONSIDERED TO BE RELEVANT

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
X	US Pub. No. 2003/0018346 A1 (Follmer et al.) 23 January 2003 (23.01.2003).	51-55,57,58,64 and 96-102

☐

Further documents are listed in the continuation of Box C.

☐

See patent family annex.

* Special categories of cited documents:	
"A" document defining the general state of the art which is not considered to be of particular relevance	"T" later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention
"E" earlier application or patent published on or after the international filing date	"X" document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone
"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)	"Y" document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art
"O" document referring to an oral disclosure, use, exhibition or other means	"&" document member of the same patent family
"P" document published prior to the international filing date but later than the priority date claimed	

Date of the actual completion of the international search

09 June 2008 (09.06.2008)

Date of mailing of the international search report

13 JUN 2008

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (571) 273-3201

Authorized officer

Tuan V. Nguyen

Telephone No. 571-272-5962

*[Signature]*  
*[Signature]*

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
CRAIG P. WONG  
TOWNSEND AND TOWNSEND AND CREW LLP  
TWO EMBARCADERO CENTER, 8TH FLOOR  
SAN FRANCISCO, CA 94111

*Smith*

**PCT**

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

*018489-002541P*

Date of mailing (day/month/year) **13 JUN 2008**

Applicant's or agent's file reference  
18489-27-IPC

**FOR FURTHER ACTION**  
See paragraph 2 below

International application No. PCT/US04/12600 ✓	International filing date (day/month/year) 22 April 2004 (22.04.2004) ✓	Priority date (day/month/year) 22 April 2003 (22.04.2003) ✓
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International Patent Classification (IPC) or both national classification and IPC

IPC: **A61B 17/32** (2006.01)  
USPC: 606/170

Applicant  
FOX HOLLOW TECHNOLOGIES, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

## 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

*9/13/08*

*2/22/05*

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion 09 June 2008 (09.06.2008)	Authorized officer Tuan V. Nguyen <i>[Signature]</i> Telephone No. 571-272-5962 <i>[Signature]</i>
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Form PCT/ISA/237 (cover sheet) (April 2007)

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**Docketed By** 735

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/12600

**Box No. I Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43*bis*.1(a))

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
- ☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
- ☐ filed together with the international application in electronic form.
- ☐ furnished subsequently to this Authority for the purposes of search.

4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

5. Additional comments:

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.  
PCT/US04/12600

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

**1. Statement**

Novelty (N)	Claims <u>1-50,56,59-63,66-95 and 103-116</u>	YES
	Claims <u>51-55,57,58,64 and 96-102</u>	NO
Inventive step (IS)	Claims <u>1-50,56,59-63,66-95 and 103-116</u>	YES
	Claims <u>51-55,57,58,64 and 96-102</u>	NO
Industrial applicability (IA)	Claims <u>1-116</u>	YES
	Claims <u>NONE</u>	NO

**2. Citations and explanations:**

Claims 51-55, 57, 58, 64, and 96-102 lack novelty under PCT Article 33(2) as being anticipated by Follmer et al. (US Pub. No. 2003/0018346 A1). Follmer et al. disclose a device and method of cutting tissue in a blood vessel, comprising the steps of: providing a device having a rotatable cutting element and an opening, the rotatable cutting element being movable from a stored position to a cutting position, the cutting element being exposed over at least 180-270 degrees in the cutting position; advancing the device through a blood vessel; moving the cutting element to the cutting position; cutting tissue with the cutting element while the cutting element is rotating; the cutting step being carried out with the device in the bent position; the cutting step is carried out with the axis of rotation maintaining the same orientation with respect to the proximal portion when the device moves between the straight and bent positions.

Claims 1-50, 56, 59-95, and 103-116 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a method of re-entering a lumen during an endovascular procedure when in a subintimal space, comprising the steps of: providing a device having a cutter, an opening, and an energy emitter coupled to the cutter, the cutter and energy emitter being coupled to a torque transmitting element which rotates the cutter and energy emitter together; advancing the device through a lumen into a subintimal space adjacent to the lumen; emitting energy from the energy emitter while in the subintimal space to locate the lumen after the advancing step; moving the energy emitter and cutting element together to expose the cutting element to tissue; and cutting through the wall using the rotating cutting element to provide an access path from the subintimal space to the lumen.

Claims 1-116 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

## NOTES TO FORM PCT/ISA/220 (continued)

The letter must indicate the differences between the claims as filed and the claims as amended. It must, in particular, indicate, in connection with each claim appearing in the international application (it being understood that identical indications concerning several claims may be grouped), whether

- (i) the claim is unchanged;
- (ii) the claim is cancelled;
- (iii) the claim is new;
- (iv) the claim replaces one or more claims as filed;
- (v) the claim is the result of the division of a claim as filed.

The following examples illustrate the manner in which amendments must be explained in the accompanying letter:

1. [Where originally there were 48 claims and after amendment of some claims there are 51]:  
"Claims 1 to 29, 31, 32, 34, 35, 37 to 48 replaced by amended claims bearing the same numbers, claims 30, 33 and 36 unchanged; new claims 49 to 51 added."
2. [Where originally there were 15 claims and after amendment of all claims there are 11]:  
"Claims 1 to 15 replaced by amended claims 1 to 11."
3. [Where originally there were 14 claims and the amendments consist in cancelling some claims and in adding new claims]:  
"Claims 1 to 6 and 14 unchanged; claims 7 to 13 cancelled; new claims 15, 16 and 17 added." or  
"Claims 7 to 13 cancelled; new claims 15, 16 and 17 added; all other claims unchanged."
4. [Where various kinds of amendments are made]:  
"Claims 1-10 unchanged; claims 11 to 13, 18 and 19 cancelled; claims 14, 15 and 16 replaced by amended claim 14; claim 17 subdivided into amended claims 15, 16 and 17; new claims 20 and 21 added."

### "Statement under Article 19(1)" (Rule 46.4)

The amendments may be accompanied by a statement explaining the amendments and indicating any impact that such amendments might have on the description and the drawings (which cannot be amended under Article 19(1)).

The statement will be published with the international application and the amended claims.

It must be in the language in which the international application is to be published.

It must be brief, not exceeding 500 words if in English or if translated into English.

It should not be confused with and does not replace the letter indicating the differences between the claims as filed and as amended. It must be filed on a separate sheet and must be identified as such by a heading, preferably by using the words "Statement under Article 19(1)."

It may not contain any disparaging comments on the international search report or the relevance of citations contained in that report. Reference to citations, relevant to a given claim, contained in the international search report may be made only in connection with an amendment of that claim.

### Consequence if a demand for international preliminary examination has already been filed

If, at the time of filing any amendments and any accompanying statement, under Article 19, a demand for international preliminary examination has already been submitted, the applicant must preferably, at the time of filing the amendments (and any statement) with the International Bureau, also file with the International Preliminary Examining Authority a copy of such amendments (and of any statement) and, where required, a translation of such amendments for the procedure before that Authority (see Rules 55.3(a) and 62.2, first sentence). For further information, see the Notes to the demand form (PCT/IPEA/401).

If a demand for international preliminary examination is made, the written opinion of the International Searching Authority will, except in certain cases where the International Preliminary Examining Authority did not act as International Searching Authority and where it has notified the International Bureau under Rule 66.1bis(b), be considered to be a written opinion of the International Preliminary Examining Authority. If a demand is made, the applicant may submit to the International Preliminary Examining Authority a reply to the written opinion together, where appropriate, with amendments before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later (Rule 43bis.1(c)).

### Consequence with regard to translation of the international application for entry into the national phase

The applicant's attention is drawn to the fact that, upon entry into the national phase, a translation of the claims as amended under Article 19 may have to be furnished to the designated/elected Offices, instead of, or in addition to, the translation of the claims as filed.

For further details on the requirements of each designated/elected Office, see the *PCT Applicant's Guide*, Volume II.

# PATENT COOPERATION TREATY

From the INTERNATIONAL SEARCHING AUTHORITY

To:  
CRAIG P. WONG  
TOWNSEND AND TOWNSEND AND CREW LLP  
TWO EMBARCADERO CENTER, 8TH FLOOR  
SAN FRANCISCO, CA 94111

## PCT

NOTIFICATION OF TRANSMITTAL OF  
THE INTERNATIONAL SEARCH REPORT AND  
THE WRITTEN OPINION OF THE INTERNATIONAL  
SEARCHING AUTHORITY, OR THE DECLARATION

(PCT Rule 44.1)

Applicant's or agent's file reference 18489-27-IPC		Date of mailing (day/month/year)
International application No. PCT/US04/12600		FOR FURTHER ACTION See paragraphs 1 and 4 below
Applicant FOX HOLLOW TECHNOLOGIES, INC.		International filing date (day/month/year) 22 April 2004 (22.04.2004)

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**Where?** Directly to the International Bureau of WIPO, 34 chemin des Colombettes  
1211 Geneva 20, Switzerland, Facsimile No.: (41-22) 338.82.70.

**For more detailed instructions,** see the notes on the accompanying sheet.

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Name and mailing address of the ISA/US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Authorized officer Tuan V. Nguyen Telephone No. 571-272-5962
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